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March 6, 2012

VIA ECF & FedEx

Hon. Madeline Cox Arleo, U.S.M.J.
United States District Court
District of New Jersey
M.L. King, Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Illinois National Insurance Co. v. Wyndham Worldwide Operations, Inc., et al.
Civil Action No. 09-1724

Dear Judge Arleo:

This firm represents the Wyndham entities in the referenced matter. We respectfully submit this reply letter-brief in further support of our February 14, 2012 letter [Doc. No. 141] to compel Illinois National to produce review procedures and guidelines for changing or issuing aviation insurance policies. Because these documents are relevant to Wyndham's contention that Illinois National's negligence precludes it from reforming the Managed Aircraft Endorsement (the "Endorsement"), the Court should order their production.

Through the meet and confer process, Wyndham narrowed Document Requests Nos. 1-4 (*see* Ex. A to Wyndham's February 14 letter [Doc 141-1]) to target Illinois National's review procedures that are most needed to demonstrate its negligence. Wyndham now seeks review and quality control policies and procedures used by AIG (or Chartis) Aviation for aviation insurance policies and endorsements prior to their issuance or any such procedures for making changes to insurance policies and endorsements. Wyndham has limited the timeframe for this request to January 1, 2007 to December 31, 2011. As part of the meet and confer, Illinois National agreed to produce, in addition to the June 15, 2008 Review Procedure (at Ex. B to Illinois National's February 28 letter), the procedures that immediately predate and postdate the June 2008 review procedures (and a document referenced therein), but no more.¹

¹ Illinois National argues that the only relevant procedure is the one it already produced, which was implemented on June 15, 2008, because it was the procedure in place on June 20 when "Jet's broker [Marsh] requested" the use of "Named Insured" in the Endorsement. However, Illinois National may have its date wrong. Illinois National's contention that Marsh first requested the change in June 2008 is not reflected in the testimony of two Marsh employees who

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Illinois National's February 28 opposition letter-brief is notable for what it does not say. Illinois National is not objecting to Wyndham's revised request for review procedures on the grounds that it is burdensome, harassing, or ambiguous. Instead, its justification for not producing the documents rests solely on its (misplaced) belief that the procedures sought could not possibly be relevant. Illinois National's position fails to comprehend the breadth of what "relevance" means under the Federal Rules. In addition, Illinois National contends that Wyndham has somehow "conceded" that the only review procedures that are relevant are those Illinois National has agreed to produce. Wyndham, however, has made no such concession.

Federal Rule of Civil Procedure 26(b)(1) provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." The policy and endorsement review and issuance procedures that Wyndham seeks are directly related to determining whether Illinois National was negligent when it changed and issued the Endorsement. This is the case for the simple reason that the procedures sought can be used by Wyndham to prove its case.

One of the ways that Wyndham can demonstrate Illinois National's negligence is by comparing the procedures it (purportedly) used for the Endorsement to (1) earlier and later procedures it used for the type of insurance policy issued to Jet Aviation and Wyndham -- the Golden Medallion Policy as well as (2) procedures that are in place for other types of aviation insurance policies and endorsements. The purpose of such a comparison would be to discover whether Illinois National decided to exercise stricter care in issuing or amending some policies and endorsements but declined to have such procedures in place when the Endorsement was changed. If that is the case Wyndham is entitled to use these procedures to inquire of Illinois National's witnesses why it decided to use relaxed procedures for the Endorsement when it was capable of exercising stricter care in other circumstances and for other policies.

In response, the best Illinois National can state is that Wyndham is on some sort of "fishing expedition." However, that is simply not the case, because all this "expedition" would uncover is evidence directly relevant to the inquiry that the Third Circuit directed the District Court to undertake, *i.e.*, whether Illinois National was negligent.

brokered the Illinois National Policy. Alan Winters of Marsh testified that he believed the use of "Named Insured" in the Endorsement was first requested in March 2008; he believed that ILNAT029057 (at Ex. A of Illinois National's February 28 letter) was attached to a March 26, 2008 e-mail from Barbara Tomlinson of AIG (now Chartis) Aviation to Marsh. (*See* Ex. A Tr. 130-133.) Zoe Holmes of Marsh also testified that Illinois National agreed to the change prior to June 20, 2008. (*See* Ex. B. Tr. 49-53.)

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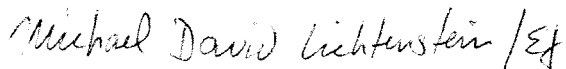
March 6, 2012

Illinois National also argues that Wyndham has “conceded” that the only relevant procedures are those Illinois National has already produced or stated it will produce. If that were actually the case, we would not be writing these letter-briefs. Instead, Wyndham has articulated in its letters to the Court and in a letter to Illinois National the types of documents it is seeking. By reframing Wyndham’s request to what it is agreeable to producing, Illinois National disingenuously obfuscates the issues.

Based on the foregoing, Illinois National’s argument that *only* the June 15, 2008 procedure that was in place when Illinois National contends the “mistake”² occurred is relevant is far too narrow and reflects an erroneous understanding of “relevance” under the Federal Rules. Wyndham is entitled to know whether Illinois National has exercised stricter care in amending and issuing other versions of the Golden Medallion policy and other aviation policies and if, so why. The starting point for such an inquiry is the review procedures that describe the level of care to be used.

For these reasons, and those set forth in Wyndham’s February 14 letter-brief, Wyndham respectfully requests that the Court compel Illinois National to produce review and quality control procedures for its aviation insurance policies and endorsements in place during 2007-2011 inclusive.

Respectfully submitted,



Michael David Lichtenstein

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03/06/12 19890445.1

cc: Andrew T. Houghton, Esq. (via ECF)
Aaron F. Mandel, Esq. (via ECF)

² It is a bit premature for Illinois National to state, at page 2 of its letter, that it is “undisputed” that the term “Named Insured” as used by Illinois National in the Managed Aircraft Endorsement was intended to refer only to Jet Aviation entities. Discovery is still ongoing with several depositions to be taken.

EXHIBIT A

5/27/2010 Winters, Alan D. Deposition Vol. I (pp. 1 - 245)

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT COURT OF NEW JERSEY

3 ILLINOIS NATIONAL)
4 INSURANCE COMPANY,)
5)

6 Plaintiff,)

7 VS.) NO. 2:09-cv-01724

8)
9 WYNDHAM WORLDWIDE)
10 OPERATIONS, INC.; WYNDHAM)
11 WORLDWIDE CORPORATION;)
12 WYNDHAM VACATION)
13 OWNERSHIP, INC.; and)
14 WYNDHAM RESORT DEVELOPMENT)
15 CORPORATION,)
16)
17 Defendants.)

18 -----
19 ORAL DEPOSITION OF
20 ALAN D. WINTERS
21 MAY 27, 2010
22 VOLUME 1
23 -----

24 ORAL DEPOSITION OF ALAN D. WINTERS, produced as a
25 witness at the instance of the PLAINTIFF, and duly
sworn, was taken in the above-styled and numbered cause
on May 27, 2010, from 9:00 a.m. to 5:53 p.m., before
Stacey Q. Paget, CSR in and for the State of Texas,
reported by machine shorthand, at the law offices of
Sedgwick, Detert, Moran & Arnold, LLP, 1717 Main Street,
54th Floor, Dallas, Dallas County, Texas, pursuant to

5/27/2010 Winters, Alan D. Deposition Vol. I (pp. 1 - 245)

the Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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1 No. 2.

2 A. Managed Aircraft Endorsement 000401 as per
3 attached UNTXo whatever.

4 Q. Could you just help me because the print is so
5 small?

6 A. Right there (indicating).

7 Q. Managed aircraft endorsement as per UNTXo1?

8 A. Yeah, that's the -- on this other stuff.

9 Q. That's a policy form?

10 A. Yes.

11 Q. Okay.

12 A. That's the one that's got the marks about the
13 named insured.

14 MR. HOUGHTON: What page is that?

15 MR. LICHTENSTEIN: That's on page Marsh
16 000401.

17 A. That's that page that's in one of those at the
18 top of that pile there, the one that you guys were
19 talking about "the named insured" was handwritten in,
20 that's the form.

21 Q. (BY MR. LICHTENSTEIN) And is that the form
22 that reads "Jet Aviation," or is that the form that
23 reads "named insured"?

24 A. Let me have that, and I'll -- it's right there
25 on the top. It's one of the last one or two. It's that

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1 correspondence in the top there.

2 Q. Let me make it easier. I'm going to hand you
3 the pile.

4 A. Yeah, that would be better. Right here.

5 Q. What exhibit number are you looking at,
6 Mr. Winters?

7 A. This is No. 11.

8 Q. And that's the e-mail from Ms. Holmes to
9 Ms. Tomlinson?

10 A. Correct.

11 Q. And on the page that's Bates numbered ILNAT
12 029057, that's the form you're referring to?

13 A. Yes.

14 Q. UNTX0186?

15 A. Pretty sure that's what it is.

16 Q. So going back to Exhibit 6, and that was the
17 e-mail from Zoe Holmes to Barb -- I'm sorry -- from
18 Barbara Tomlinson to Zoe Holmes attaching the final
19 version of the specs?

20 A. Correct. But that's not complete because all
21 the attachments that are referenced in here aren't with
22 this.

23 Q. Right. So this, as a preliminary matter, isn't
24 actually a complete copy of the e-mail and attachments;
25 is that right?

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1 A. That's the way I'm reading it, yes.

2 Q. Okay. But as you just pointed out to us on
3 Marsh 000401, there is a reference that there was an
4 agreement to use managed aircraft endorsement form
5 UNTX0186; is that right?

6 A. Yes.

7 Q. Okay. Now, that form, and I'm referring now
8 back to Exhibit 11, which is the Holmes e-mail with the
9 handwriting, that form read, certainly at the time that
10 this e-mail was sent on March 26, 2008, let's just look
11 at paragraph 5, that included the language "Jet Aviation
12 Business Jets, Inc.," correct? That didn't include the
13 language "the named insured," right?

14 A. At the time this was done, that what you're
15 holding in your hand would have been part of this
16 (indicating).

17 Q. And when you say "that," do you mean the form,
18 or do you mean the form when --

19 A. That piece of paper you got in your hand right
20 there, that would have been connected to this.

21 Q. Okay. So you mean the piece of paper including
22 the handwritten --

23 A. Yes.

24 Q. -- notations and the circles, correct?

25 A. Yeah, I don't -- some of those circles are your

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1 circles, but the ones that were originally there, yes.

2 Q. Okay. The ones that say "the named insured"
3 substituting for "Jet Aviation Business Jets, Inc.,"
4 correct?

5 A. That's my understanding, yes.

6 Q. So would there have been any other attachments
7 that you think are missing from Exhibit 6?

8 A. Oh, I'd have to look at every line of that to
9 tell you. I'd have to look at every line before I could
10 tell you that, but my belief is it would be that there
11 are other attachments that should be included with that.

12 Q. So your understanding, just again, and then
13 I'll get off this topic, of the reference to the managed
14 aircraft endorsement UNTX, that was as amended by the
15 handwriting?

16 A. Right, by the handwriting.

17 Q. Now, when the policy first issued, when the
18 actual physical policy came out, were those changes
19 included in the managed aircraft endorsement?

20 A. I don't think I could answer that. There was
21 something here (looking through document).

22 Q. Again, I don't mean it to be a trick question.
23 If you'll look on Exhibit 11.

24 A. Yes, it says right there it's supposed to have
25 been changed to "the name insured," so --

EXHIBIT B

5/28/2010 Holmes, Zoe (pp. 1 - 94)

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3 _____X
4 ILLINOIS NATIONAL INSURANCE Case No.: 2:09-cv-01724
5 COMPANY,

6
7 Plaintiff,

8
9 -vs-

10 WYNDHAM WORLDWIDE OPERATIONS,
11 INC., WYNDHAM WORLDWIDE
12 CORPORATION; WYNDHAM VACATION
13 OWNERSHIP, INC.; and WYNDHAM
14 RESORT DEVELOPMENT CORPORATION,

15
16 Defendants.

17 _____X
18 *****

19 ORAL DEPOSITION OF

20
21 ZOE HOLMES

22
23 MAY 28, 2010

24 *****

25 ORAL DEPOSITION of ZOE HOLMES, produced as a
witness at the instance of Plaintiff, and duly sworn,
was taken in the above-styled and -numbered cause on the
28th day of May 2010, from 9:06 a.m. to 11:41 a.m.,
before TAMMY DICKSON CROSS, a Certified Shorthand
Reporter in and for the State of Texas, reported by
machine shorthand, at law offices of Sedgwick, Detert,
Moran & Arnold, LLP, 1717 Main Street, 54th Floor,
Dallas, Texas 75201, pursuant to the Federal Rules of
Civil Procedure and the provisions stated on the record
or attached hereto.

5/28/2010 Holmes, Zoe (pp. 1 - 94)

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1 don't recall sitting here today what those things were.

2 Q I'm going to show you a copy of an exhibit we
3 marked yesterday at Mr. Winters' deposition. It's
4 Exhibit No. 6.

5 MR. LICHTENSTEIN: I'm sorry. Were those
6 the official ones I was looking at or -- I didn't take
7 your pile, did I?

8 MR. HOUGHTON: No, no, no. Those -- I'm
9 just going to get out of your way.

10 MR. LICHTENSTEIN: Thank you. I think
11 I'll move. Can you hear me okay?

12 THE REPORTER: Yes.

13 THE WITNESS: Actually, if you could move
14 a little closer, my hearing is obstructed today --

15 MR. LICHTENSTEIN: More than happy to.

16 THE WITNESS: -- because of allergies, so
17 it is kind of hard for me to hear you.

18 MR. LICHTENSTEIN: I'm coming all the way
19 down.

20 THE WITNESS: Thank you.

21 MR. LICHTENSTEIN: Now I'm getting in the
22 big show down here. This is the deep end of the water.

23 Q Ms. Holmes, have you seen a copy of -- have
24 you seen a copy of Exhibit 6 before?

25 A Yes.

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1 Q Can you tell me what that is?

2 A This is Barb Tomlinson's e-mail back to me
3 sending me the signed specifications that were agreed to
4 by the parties negotiating the renewal of the 2008
5 policy.

6 Q Okay. And at the time in or around March 26,
7 2008, the date of the e-mail, would you have had an
8 opportunity to review the specifications for accuracy?

9 A I worked with Mr. Winters on this, yes.

10 Q Okay. And you see, I guess, on the last page
11 of the document appears to be Ms. Tomlinson's signature;
12 is that right?

13 A Correct.

14 Q And is it your understanding that through that
15 signature, Ms. Tomlinson, on behalf of AIG, is agreeing
16 to provide coverages in accordance with the
17 specifications identified in this document; is that
18 correct?

19 A That's my understanding, yes.

20 Q And is it your understanding that all of the
21 terms and conditions that were agreed to for the April
22 2008 fleet policy are identified in this final
23 specification document?

24 A As far as I know, yes.

25 Q And would you then expect the policy that

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1 issued, the 2008 policy that AIG issued would have been
2 in accord with the terms and conditions identified in
3 these final specifications?

4 A Well, this is an outline, but, yes, it's an
5 outline of the coverages.

6 Q Ms. Tomlinson [sic], I'm going to show you a
7 copy of the document we marked at Mr. Winters'
8 deposition as Exhibit 11. It's a June 20, 2008 e-mail
9 from Zoe Holmes to Barbara Tomlinson. Do you recognize
10 this document?

11 A This is an e-mail I would have sent to Barb.

12 Q You would have drafted it?

13 A Yes.

14 Q And am I correct that this is a document you
15 would have drafted after you reviewed the actual 2008
16 policy that AIG would have sent to you?

17 A Yes.

18 Q Okay. Based on the contents of this e-mail,
19 did you identify any inconsistencies between the policy
20 as initially drafted by AIG and the final form of
21 specifications that were included in the exhibit we just
22 looked at, Exhibit No. 6?

23 A Could you repeat the question, please?

24 Q Sure. Let's just take a first look at the
25 paragraph. This may speed it up. You wrote, Alan and I

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1 have discussed the Jet hull and liability policy,
2 comparing the policy against the signed policy
3 specifications. Now, are the signed policy
4 specifications the attachment we just saw that were
5 signed by Ms. Tomlinson on March 26?

6 A That's correct, yes.

7 Q Okay. So you're comparing the policy AIG sent
8 you to the signed specifications attached to Exhibit
9 6?

10 A That's correct, yes.

11 Q Okay. And am I correct then that in the
12 numbered paragraphs that follow in this e-mail, you are
13 identifying inconsistencies between those signed policy
14 specifications and the actual language of the policy AIG
15 drafted?

16 A That's correct, yes.

17 Q And in Paragraph 4, you write, Endorsement No.
18 2, managed aircraft endorsement, at Paragraph 4, the
19 name Jet Aviation Business Jets, Inc., should read the
20 named insured. Do you see that?

21 A Yes.

22 MR. HOUGHTON: You -- you misread that,
23 but --

24 MR. LICHTENSTEIN: I'm sorry. Well, I'll
25 read it again just to make sure the record is clear.

5/28/2010 Holmes, Zoe (pp. 1 - 94)

1 MR. WULFF: Well, it says what it says.

2 MR. LICHTENSTEIN: Okay.

3 MR. HOUGHTON: It says what it says.

4 MR. LICHTENSTEIN: It says what it says.

5 Q Is it your understanding that Barb Tomlinson
6 on behalf of AIG had agreed in the signed policy
7 specifications to make that change, to substitute Jet
8 Aviation Business Jets, Inc., for the term named
9 insured?

10 MR. HOUGHTON: Objection.

11 A That's my understanding.

12 Q Okay. And that's, in fact, what you wrote to
13 Ms. Tomlinson on June 20th?

14 A Correct.

15 Q Do you have any reason to believe today that
16 that was an inaccurate statement?

17 A I do not, no.

18 Q Just let me ask you one further question about
19 this document. If you go to the second to last page,
20 that's the managed aircraft endorsement --

21 A Right.

22 Q -- you see there's -- there is one, two,
23 three -- four different places strike-outs of the term
24 Jet Aviation Business Jets, Inc., and then a write-in of
25 the term the named insured. Do you see that?

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3 I, TAMMY DICKSON CROSS, Certified Shorthand
4 Reporter, duly commissioned and qualified in and for the
5 State of Texas, do hereby certify that there came before
6 me on the 28th day of May 2010, at 9:06 a.m., at the law
7 offices of Sedgwick, Detert, Moran & Arnold, LLP, 1717
8 Main Street, 54th Floor, Dallas, Texas 75201, the
9 following named person, to-wit, ZOE HOLMES, who was by
10 me duly sworn to testify the truth, the whole truth and
11 nothing but the truth of her knowledge touching and
12 concerning the matters in controversy in this case; and
13 that she was thereupon carefully examined upon her oath
14 and her examination was reduced to writing by me or
15 under my supervision; that the transcript is a true
16 record of the testimony given by the witness, same to be
17 sworn and subscribed by said witness before any Notary
18 Public, pursuant to the agreement of the parties.

19 I further certify that I am neither attorney nor
20 counsel for nor related to or employed by any of the
21 parties to the action in which this examination is
22 taken, and further that I am not a relative or employee
23 of any attorney or counsel employed by the parties
24 hereto or financially interested in the action.

25

5/28/2010 Holmes, Zoe (pp. 1 - 94)

1 In witness whereof, I have hereunto set my hand and
2 affixed my CSR seal this _____ day of _____,
3 2010.

4
5
6
7
8 _____
TAMMY DICKSON CROSS, Texas CSR #6925

9 Expiration Date: 12/31/11
10
11
12
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14
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16
17
18
19
20
21
22
23
24
25